United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

DOCKET NO. 74-2287

ORIGINAL

74-2287

B

P/S

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

In the Matter of

HAROLD A. LIPTON and IRVING LEVIN,

Plaintiffs-Appellants,

-against-

ROBERT J. SCHMERTZ,

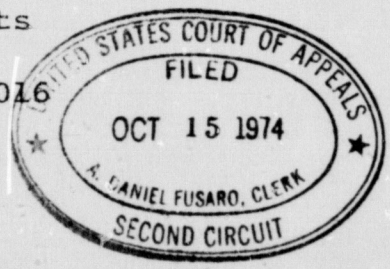
Defendant-Appellee.

On Appeal from the United States District Court

for the Southern District of New York

APPELLANTS' APPENDIX - VOL. I

ROBERT P. HERZOG
Attorney for Appellants
185 Madison Avenue
New York, New York 10016
(212) 725-0001



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

*This document not in the original record because of refusal of the Clerk SDNY to enter same because it was not signed by the District Judge.

RELEVANT DOCKET ENTRIES

HAROLD A. LIPTON & IRVING H. LEVIN v. ROBERT J. SCHMERTZ

74 CIV. 4211

Date	Proceedings
9/25/74	Filed complaint and issued summons.
10/03/74	Filed plaintiff's separate appendix of exhibits on application for order of attachment.
10/03/74	Filed plaintiffs memorandum of law in opposition to defendants motion to strike registration of judgment and in support of plaintiff's application for an order of attachment.
10/01/74	Filed true copy of opinion #41246 by Judge Motley... The motion of deft. Robert J. Schmertz to vacate registration in this District of a judgment of the U.S.D.C. for the Central District of Cal. is granted. The motion of plaintiffs Harold A. Lipton and Irving H. Levin for a writ of Attachment is denied for reasons indicated herein. So ordered. -- Motley J.
10/01/74	Filed plaintiffs notice of appeal to the USCA for the 2nd Circuit from order and opinion by Judge Motley dated 9-30-74. m/copy to Reaves & McGrath, Esqs., 1 Chase Manh. Pl. NYC 10005

COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------x

HAROLD A. LIPTON and
IRVING H. LEVIN,

Plaintiffs,

- against -

ROBERT J. SCHMERTZ,

Defendant.
----------x

CIVIL ACTION
NO. 74 C 4211

COMPLAINT

Plaintiffs, by their attorney, ROBERT P. HERZOG, respectfully shows and alleges:

JURISDICTION

FIRST: Jurisdiction is founded on diversity of citizenship and amount, and upon a judgment entered in the United States District Court for the Central District of California on July 25, 1974, a copy of which is annexed hereto.

(A) Plaintiffs are citizens of the State of California. The defendant is a citizen and resident of the State of New Jersey.

COMPLAINT

The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00.

(B) Jurisdiction is further founded upon the entry of a judgment in the United States District Court for the Southern District of New York, and the cause of action alleged herein is an action on said judgment.

COUNT ONE

SECOND: That prior hereto, the plaintiffs, HAROLD A. LIPTON and IRVING H. LEVIN, above named, commenced an action against the defendant above named, ROBERT J. SCHMERTZ, in the United States District Court for the Central District of California, which Court is a court of record of general jurisdiction duly created by the laws of the United States of America.

THIRD: The defendant duly appeared in said action by Coleman and O'Connell, his attorneys.

COMPLAINT

FOURTH: Such proceedings were thereupon duly had and on July 25, 1974, a judgment was duly given and entered by the aforesaid United States District Court, in favor of plaintiffs in said action and against the defendant therein for the sum of $4,221,047.57.

FIFTH: That there is now justly due and owing to the plaintiffs from the defendant, the sum of $4,221,047.57, with interest thereon from July 25, 1974, no part of which has been paid.

WHEREFORE, plaintiffs respectfully pray for judgment against the defendant in the sum of $4,221,047.57, together with interest thereon from July 25, 1974, together with the costs and disbursements of this action.

ROBERT P. HERZOG
Attorney for Plaintiffs
185 Madison Avenue
New York, New York 10016
(212) 725-0001

EXHIBIT A,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

CERTIFICATE OF JUDGMENT FOR REGISTRATION

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
----------X

HAROLD A. LIPTON and
IRVING H. LEVIN,

Plaintiffs,

-against-

ROBERT J. SCHMERTZ,

Defendant.

CIVIL ACTION
NO. 73 1303 R

JUDGMENT

----------X

CERTIFICATE OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, EDWARD M. KRITZMAN, Clerk of the United States District Court for the Central District of California do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above entitled action on July 25, 1974, as it appears of record in my office, and that *a notice of appeal from said judgment was filed in my office on August 12, 1974. To date, no stay of execution of said judgment has been filed or entered.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said Court this 5th day of September, 1974.

_____, Clerk

By ANDREW H. NELSON Deputy Clerk

*When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on (insert date) upon the entry of (If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert "the judgment", otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.) If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on (insert date) and the judgment was affirmed by mandate of the Court of Appeals issued (insert date) or "a notice of appeal from the said judgment was filed in my office on (insert date) and the appeal was dismissed by the (insert "Court of Appeals" or "District Court") on (insert date)", as the case may be.

EXHIBIT A,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

Entered and Filed
July 25, 1974
Clerk U.S. District Court
Central District of California
By

Deputy

JUDGMENT ON THE VERDICT
(FOR PLAINTIFFS)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HAROLD A. LIPTON and IRVING H. LEVIN,

Plaintiffs,

vs.

ROBERT J. SCHMERTZ,

Defendant.

CASE NO. 73-1303-R

JUDGMENT ON THE VERDICT
(FOR PLAINTIFFS)

This case having been tried by the Court and a Jury, before the Honorable Manuel L. Real, Jr., judge presiding, and the issues having been duly tried, and the Jury having duly rendered its verdict; now therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that defendant, ROBERT J. SCHMERTZ, pay to plaintiffs, HAROLD A. LIPTON and IRVING H. LEVIN, compensatory damages in the sum of

EXHIBIT A,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

JUDGMENT ON THE VERDICT
(FOR PLAINTIFFS)

$250,000, plus interest at the rate of 7% from August 7, 1972, in the amount of $34,232.87, plus compensatory damages in the sum of $3,435,000; and that defendant, ROBERT J. SCHMERTZ, pay to plaintiffs, HAROLD A. LIPTON and IRVING H. LEVIN, punitive damages in the sum of $500,000;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said plaintiffs, HAROLD A. LIPTON and IRVING H. LEVIN, have and recover costs from the said defendant, ROBERT J. SCHMERTZ, taxed in the sum of $1,814.70.

Dated: July 25, 1974.

_____
United States District Court Judge

7/31/74 fixed costs in sum of $1,814.70 against Deft.

I hereby attest and certify on August 28, 1974 that the foregoing document is a full, true and correct copy of the original on file in my office and in my legal custody.
Clerk U.S. District Court
Central District of California
BY_____Deputy

EXHIBIT B,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

BOSTON HERALD, JULY 24, 1974

Celts' Schmertz Loses 4.2M Breach of Contract Suit

LOS ANGELES (AP)—A federal court jury has awarded $4.2 million in damages to two men in their breach of contract suit against Celtics' owner Bob Schmertz in connection with the sale of the National Basketball Association team in 1972, it was disclosed yesterday.

The jury voted in favor of Harold Lipton and Irving Levine, who were forced by the league to sell the team after they purchased it for $3.7 million in April 1972.

The NBA Board of Governors refused to approve their purchase because Lipton and Levine were both officers of National General Corp., a company of which Seattle SuperSonics owner Sam Schulman is an officer.

Lipton and Levine are no longer associated with National General, attorneys said.

According to court records, Lipton and Levine sold the team to Schmertz in May 1972 for the same price they would have paid for it.

In their suit against Schmertz, Lipton and Levine contended that terms of the sale included an option for the two to buy back 50 per cent of the Celtics within a year.

The action claimed Schmertz refused to allow Lipton and Levine to repurchase any part of the Celtics.

After the jury verdict Monday, U.S. Dist. Court Judge Manuel Real ordered Schmertz to appear Sept. 9 for a contempt hearing on grounds he ignored a court order to appear at the trial of the lawsuit against him.

Schmertz was unavailable for comment.

EXHIBIT C,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

D.C. No. 73-1303 R
D.C. Judge M. Real
Filed in D.C. 6/8/73
Notice of Appeal
Filed: 8/12/74
..... FD. 2D. P .....

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

74-2522

FPI LC 3-73-2

CIVIL	DC, CENTRAL DISTRICT	Related to 74-2046 , 74-2305

HAROLD A. LIPTON and IRVING H. LEVIN,

Plaintiffs-Appellees,

vs.

ROBERT J. SCHMERTZ,

Defendant-Appellant.

For Appellee:
Stuart Benjamin, Esq.
Frank Rothman, Esq.

For Appellant:
Coleman & O'Connell
Giordano, Halleran & McOmber

DATE 1974	APPELLANT'S ACCOUNT	BALANCE	RECEIVED	DISBURSE
AUG 16	Deposit, R. 12 C.E.O.C. (46576)	50 —	50 —	
AUG 16	Treasurer U.S.	0		50
	A TRUE COPY ATTEST Sept 25, 1974 EMIL E. NELFI, JR., CLERK BY DEPUTY CLERK			

EXHIBIT C,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

74-2522

DATE 1974	FILINGS-PROCEEDINGS Related to 74-2305; 74-2046 and _____	CLERK'S FEES APPELLANT	APP
UG 13	FILED APPLICATION & MOTION FOR STAY OF EXECUTION ON JUDGMENT ~~PENDING RESOLUTION OF APPEAL, AND APPLICATION FOR EMERGENCY~~ STAY PENDING DISPOSITION OF APPLICATION FOR STAY OF EXECUTION ~~(Rule 6g)~~ , (McAvoy). ty	$50	
UG 13	DOCKET FEE PD, CAUSE DOCKTD & ENTRD APPEARANCES OF COUNSEL. ty		
ug 14	Recvd aplt's telegram re intent to file response to emergency motion. (to McAvoy) cs		
ug 16	Filed aple's opposition to application for stay of execution, etc. (McAvoy). ty		
Aug 19	Filed aplt's reply to aples' opposition to application & motion for stay, etc. (McAvoy). ty		
ug 19	Recvd aplt's telegram advising reply to opposition will be filed. ty		
g 23	Filed order (M & W) aplts' motion for stay of execution of judgment pending appeal is denied. jr		
ug 27	Filed aplt's application for stay pending resolution of petition for rehearing & suggestion for rehearing en banc (McAvoy). ty		
ug 27	Filed orig & 24 copies Aplt's petition for rehearing and suggestion for rehearing en banc of interim order. (TO ALL ACTIVE JUDGES) tj		
ug 27	Filed order (3) the application by aplt for a stay pending disposition of the petition for rehearing filed concurrently with the application is denied. jr		
ep 12	Filed orig & 13 copies Aplt's proposed form of order staying execution of judgment upon filing of appropriate security pursuant to Rule 8(b) FRAP, etc. (To McAvoy) tj		
Sep 13	Recvd Aple's telegram re: opposition to Aplt's proposed form of order. (To McAvoy) tj		
ep 16	Filed 11 add'l copies of aplt's proposed form of order staying execution of judgment, etc. as requested. cs		

~~A TRUE COPY~~
ATTEST: Sept 25, 1974
~~EMIL E. MELFI, JR. CLERK~~
By
Deputy Clerk

EXHIBIT D-1,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
----------X
HAROLD A. LIPTON and
IRVING H. LEVIN,

Plaintiffs,

vs.

ROBERT J. SCHMERTZ,

Defendant.
----------X

No. 73-1303-R

AFFIDAVIT OF
ROBERT J. SCHMERTZ

STATE OF NEW JERSEY)
COUNTY OF OCEAN) ss.

I, ROBERT J. SCHMERTZ, being first duly sworn, say:

1. I am a resident of the State of New Jersey and defendant in the above entitled case. My principal occupation is Chairman of the Board, President and chief operating officer of Leisure Technology Corporation, a company which I founded.

2. Approximately in 1952, I founded a predecessor company, Pine Acres,Inc., which was in the business of construction of low cost housing. That business grew into another construction company, Robilt, Inc., and finally in approximately

EXHIBIT D-1,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

1967 I formed Leisure Technology Corporation, whose principal business has come to be the construction of retirement communities. It has constructed or has under construction more retirement communities than any other comapny in the United States.

3. Lesiure Technology is a publicly held company with approximately 3.5 million shares of stock outstanding. It is traded on the American Stock Exchange. There are approximately 2,000 stockholders of Leisure Technology Corporation among the general public. I personally own approximately 2 million shares or approximately 55% of the stock of the company. Such shares are letter stock and are presently pledged to the First National Bank of Boston as partial security for the 4 million dollar loan with which I acquired the Boston Celtics and as partial security as well for a loan of $1,980,000 to the New England Whalers, a World Hockey League team, of which I own 60% of the outstanding stock.

EXHIBIT D-1,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

4. Among the retirement communities constructed by Leisure Technology Corporation are:

Leisure Village at Lakewood, New Jersey

Leisure Village East, Lakewood, New Jersey

Among retirement communities presently being constructed and partially occupied are the following:

Leisure Village, Camarillo, California

Leisure Village West, Manchester,New Jersey

Leisure Village Long Island, Brookhaven, Long Island, New York

Leisure Village, Fox Lake, Illinois

Leisure Town, Vincentown, New Jersey

Leisure Knoll, Manchester, New Jersey

Leisure Knoll, Brookhaven,Long Island,N.Y.

Vacation Village,Stroudsberg,Pennsylvania

Vacation Village,Fox Lake,Illinois

Seven Lakes, Fort Meyers, Florida

5. While the communities are open to anyone who is retired from the age of 55 on, most of the occupants of these communities are 65 years of age or older. At present, there are approximately

15-20,000 elderly residents of the foregoing communities.

6. While the communities are being constructed, Leisure Technology Corporation subsidizes the community center facilities, including recreational centers, craft shops, theatres, golf courses and swimming pools. When construction is completed and occupancy is more than 2/3 full, Leisure Technology Corporation turns over the operation of the common community facilities to the community itself. However, in each of the instances of the uncompleted partially occupied communities, Leisure Technology Corporation at present is subsidizing and operating the aforesaid community facilities.

7. Leisure Technology Corporation is presently indebted to various financial institutions in the sum of $45 million. In addition, there are various land mortgages on properties which are not yet under construction where Leisure Technology Corporation is also in debt to various

financial institutions.

8. On Monday, July 22, 1974, I was informed that the jury had returned a verdict in the above entitled case in the sum of 4.2 million dollars against me. I am informed and believe that I have valid grounds for appeal of that judgment and that a reversal of that judgment is likely if those grounds are presented to the Court of Appeals.

9. Since Tuesday, July 23, 1974, I have made efforts to obtain security to post with the Court during the pendency of the appeal. Those efforts are delineated below.

10. In an effort to obtain a bond to post with the Court pending the appeal, I telephoned two insurance agencies in New Jersey. I spoke with Mr. Peter Boyarin of the Boyarin Agency in Jackson, New Jersey, and asked him to secure such a bond for me. He later reported to me that based upon my financial position the bonding companies whom he contacted would not

write a bond in the amount of 4.2 million dollars for me. He told me each company demanded liquid collateral in that amount not presently pledged to other financial institutions. I do not have such liquid unencumbered assets. Mr. Boyarin told me that he had received such refusals from the Hartford Insurance Group, the Peerless Insurance Company, and CNA.

11. I also spoke with Mr. Leonard Cohen and Mr. William Weber of the Madison Agency in Lakewood, New Jersey and made the same request of them as I had with Mr. Boyarin. They subsequently told me that the bonding companies they had contacted would not write such a bond without liquid collateral in amounts which I could not provide. Mr. William Weber told me that he had such a reply from Firemen's Fund, INA and Chubb & Sons.

12. Additionally, I have caused my accountants to provide financial statements to representatives of the Insurance Company of

North America (INA), and I have been informed that INA refused to write such a bond because my principal assets are already pledged as collateral on other bank loans.

13. I spoke in person to Mr. Ernest Bencivenga, President of the First State Bank of Ocean County, a bank with which I have previously done business and of which I am a member of the Board of Directors. I asked Mr. Bencivenga for a letter of credit which I would post as collateral with the bonding company or directly with the Court as a bond pending appeal. Mr. Bencivenga refused my request and said that the bank could not grant me such a letter of credit based upon my present financial status either by itself alone or on a participatory arrangement with other banks.

14. I telephoned and spoke with Mr. Edward Denby, President of the Broadway National Bank of Bayonne, New Jersey, again a bank with which I have previously done business. I made

the same request of Mr. Denby that I had made of Mr. Bencivenga, and I received the same reply.

15. I telephoned Charles Remaley, Vice President of the Morgan Guaranty Bank of New York, another bank with which I have previously done business. I made the same request of him that I had made of Messrs. Bencivenga and Denby and I received the same reply.

16. I telephoned Mr. Chad Gifford, Loan Officer of the First National Bank of Boston. I have previously done business with the First National Bank of Boston. In fact, I obtained a 4 million dollar loan with which to purchase the Boston Celtics from that bank. I also own 60% of the New England Whalers, a World Hockey League team, and the Whalers have a loan from the First National Bank of Boston of $1,980,000. As collateral for the Celtics loan, the bank holds 100% of the stock of the Celtics Basketball Club. As collateral for the Whalers loan, the bank holds my stock in the Whalers. Additionally, the bank

holds all of my shares (approximately 2 million) of letter stock in Leisure Technology to secure both loans.

I asked Mr. Gifford if he would either release my Leisure Technology stock as collateral for the loans or give me a letter of credit that I might use as either collateral to obtain a bond or to post directly with the Court. Mr. Gifford called me back and told me that the First National Bank had refused both my requests.

17. In addition to my ownership of Leisure Technology stock, the Boston Celtics stock and 60% of the New England Whalers stock, I also own 100% of the stock in the New York Stars. The Stars are a football team in the newly organized World Football League. My cash investment in the Stars was $5,000. The World Football League is in its second month of play. The Stars are suffering heavy financial losses. I have already lent the Stars $100,000 and the Stars additionally have borrowed $400,000 from Morgan

Guaranty Bank for which I have pledged as collateral my interest in a cooperative apartment house in New York City, plus a note owed to me from the Portland Basketball Club. The Stars are presently playing their games at Randall's Island, New York, which stadium I believe has the smallest seating capacity of any team in the World Football League. Based upon the four games played to date and my experience in the sports business, it is my opinion that the New York Stars will not be a money making team for at least 3 years.

18. My remaining unencumbered assets do not exceed $900,000 in value.

19. I am ready and willing to secure the judgment in the instant case during the pendency of the appeal by giving a second lien on the stock of the Boston Celtics for that time period (the stock is presently held by the First National Bank of Boston as partial collateral for the 4 million dollar loan with which I purchased the Boston Celtics). Since the instant litigation involves

alleged promises to give the plaintiffs an option to purchase one-half the Celtics at one-half my cost including $250,000 to plaintiffs and since the 4 million dollar loan was known to the plaintiffs to be part of my cost, I believe that the plaintiffs would be totally secure in the premises of the suit with such a second lien during the pendency of the appeal.

20. If forced to obtain a bond or to deposit money in a sum equal to the 4.2 million dollar judgment, I would be forced to undergo a distress sale type of liquidation of assets. My principal assets would be my stock in the Boston Celtics and my stock in Leisure Technology. To be able to liquidate those assets it would be necessary for me to repay the First National Bank of Boston the sum of 4 million dollars, plus the $1,980,000 loan to the New England Whalers.

I know from my own personal experience that basketball teams are not readily saleable

assets. Before I purchased the Boston Celtics, I know that the Celtics were on the market for approximately eight months. That purchase two years ago was in the amount of approximately 4.6 million dollars, of which 3.7 million was in cash. Further, I know from my years in business that distress sales seldom bring anything near the real value of the asset. Further, the New England Whalers have not made money as a hockey team since their inception. The World Hockey League has only been in operation two years and to my knowledge no team in the League has made money.

Thus, in my opinion, it is likely that a distress sale of the Whalers and the Celtics would not bring sufficient cash to pay off the First National Bank of Boston's $5,980,000 outstanding loans. Thus, it would be necessary for me to sell my Leisure Technology stock as well in order to complete the repayment to the First National Bank of Boston and begin to

accumulate the money necessary to meet a bond in the sum of 4.2 million dollars.

21. Leisure Technology stock has been at a high of $36 a share in the early 1970's and at a low of $1 7/8 since then. Presently it is selling in the range of $2 1/4 to $2 1/2 per share. My stock is letter stock which the market place normally discounts by at least 40%. Based upon my years of experience as a businessman, I believe that attempting to sell such an enormous block of stock would result in prices substantially below 50% of the current market.

22. Additionally, it is my judgment that such an action would inevitably depress the market to a new low for the stock, damaging the approximately 2,000 members of the general public who hold the stock.

23. Further, without the stock I would lose control of the company which, considering its predecessor companies, I have spent over 20 years in building. There would be as well an unknown

and disruptive impact upon the management and continuity of operations of the company affecting the ten residential communities presently partially occupied where Leisure Technology is completing construction and subsidizing community center operations. This is so due to provisions in the 45 million dollar loan agreement (see para. 7 supra). That agreement specifically states that if, for any reason, I cease to be President of Leisure Technology and Chairman of the Board, the loan shall be in default and the financial institutions may terminate the loans.

24. If called as a witness, I could and would testify to the foregoing.

Executed on August 8, 1974 at Lakewood, New Jersey.

/s/ Robert J. Schmertz
ROBERT J. SCHMERTZ

Subscribed and sworn to
before me on August 8,1974.
/s/ Eileen M. Wilson
Notary Public
EILEEN M. WILSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 25,1978

EXHIBIT D-2,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HAROLD A. LIPTON and
IRVING H. LEVIN,

Plaintiffs-Appellees,

vs.

ROBERT J. SCHMERTZ,

Defendant-Appellant.

NO. 74-2522

SUPPLEMENTAL AFFIDAVIT OF ROBERT J. SCHMERTZ

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.:

I, ROBERT J. SCHMERTZ, being first duly sworn, say:

1. I am a resident of the State of New Jersey and defendant-Appellant in the above-entitled case. My principal occupation is Chairman of the Board, President and chief operating officer of Leisure Technology Corporation, a company which I founded.

2. Leisure Technology is a publicly held company with approximately 3.5 million shares of stock outstanding. It is traded on the American Stock Exchange. There are approximately 2,000 stock-holders of Leisure Technology Corporation among the

general public. I own approximately 2 million shares or approximately 55% of the stock of the company. Such shares are letter stock and are presently pledged to the First National Bank of Boston as partial security for the 4 million dollar loan with which I acquired the Boston Celtics and as partial security as well for a loan of $1,980,000 to the New England Whalers, a World Hockey League team, of which I own 60% of the outstanding stock.

3. Since the filing of the Petition for Rehearing on August 27, 1974, in the above-entitled case, negotiations have been concluded whereby I am scheduled to consummate the sale of a portion of my interest in the New England Whalers on September 23, 1974.

4. The sale of a portion of my New England Whalers' stock will result in eliminating a charge of almost $2,000,000 against my principal assets, and, specifically, will satisfy the loan of $1,980,000 to the New England Whalers.

5. Because satisfaction of the $1,980,000

loan to the New England Whalers frees my 2 million shares (approximately 55%) of the stock of Leisure Technology Corporation from the pledge of such stock for this loan to the First National Bank of Boston, I am able to offer, and do offer, a lien upon all my equity in such stock in addition to a lien upon my equity in the stock of the Boston Celtics as "other appropriate security" in lieu of the $3,000,000 supersedeas bond set by the District Court.

6. Despite continued efforts, I am unable to obtain a bond in the amount of $3,000,000. The above offered pledge of my Boston Celtics and Leisure Technology equities represents my only substantial assets. I am unable to obtain any bond in any meaningful amount on my other assets which are minor in the context of this action.

7. If called as a witness, I could and would testify to the foregoing.

Executed on September 11, 1974, at Los Angeles, California.

_____
Robert J. Schmertz

Subscribed and sworn to
before me on September 11, 1974

_____
Notary Public
REBA TESSEL
My Commission Expires August 22, 1977.

EXHIBIT E,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

SCHEDULE "A"

QUESTIONS AND ANSWERS

STATE OF NEW YORK: COUNTY OF

George T. Fowler, Vice President, being duly sworn, deposes and says: That deponent is the recipient of the information subpoena and restraining notice, and the original and copy of questions accompanying said subpoena. The answers set forth below are made from information obtained from the records of the recipient:

Q. 1. Are you holding any sums to which the judgment debtor is entitled, and if so, set forth the amount thereof in your possession and the source thereof.

A. Yes - Main Office Banking - $890.66.

Q. 2. Are you holding any property belonging to the judgment debtor, and if so, describe in detail the said property and the source thereof.

A. Yes - Mr. Schmertz is guarantor of payment of a loan made by us in the amount of $400,000. and his obligation under the guaranty is secured by promissory notes payable to Mr. Schmertz in the principle sum of $36,426.83, $209,454.26 and $36,426.83. Also, 1400 shares of stock in the name of Robert J. Schmertz, evidencing his ownership interest in Fifth and 63rd Street Corporation.

EXHIBIT E,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

Q. 3. Do you have a record of any property or bank account in which the judgment debtor may have an interest, whether under the name of the judgment, under a trade or corporate name, or in association with others, as of the date of this subpoena or within one year prior thereto?

A. Yes - Main Office Banking

Q. 4. Is the judgment debtor indebted to you, and if so, set forth the amount thereof and the day or date the indebtedness was first incurred?

A. No - but debtor is obligated to us under guaranty referred to in No. 2 above.

Q. 5. In connection with any indebtedness as may be set forth in Question 4 above, have any payments been made six months prior to this subpoena; giving the dates payment was made and the amounts thereof.

A. Not applicable

Q. 6. Has the Judgment Debtor ever provided you with personal financial statements, and if so, give the dates thereof.

A. Yes - September, 1972 and February, 1973.

Sworn to before me this
11 day of September, 1974
s/ Andrew P. Schneider
Andrew P. Schneider
Notary Public State of New York
No. (illegible)
Qualified in Nassau County
Cert. Filed in New York County Clerk
Commission Expires March 30, 1976

s/ George T. Fowler
George T. Fowler
Vice President

EXHIBIT F-1,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

NEW YORK TIMES, SEPTEMBER 25, 1974

Stars Receive W.F.L. Approval To Move Franchise to Charlotte

By STEVE CADY

The New York Stars apparently have received permission from the World Football League to move their franchise to Charlotte, N. C.

There were mounting indications here and in North Carolina last night that the switch would be formally announced this morning.

At Downing Stadium, Randalls Island, where the Stars met the Detroit Wheels last night, the New York general manager, Bob Keating, confirmed that a news conference would be held today in Manhattan.

"Talks involving the principals are going on right now at a New York hotel," Keating said.

In a story prepared for today's editions, the Charlotte Observer said New York would play its first game in Charlotte on Oct. 9 against the Memphis Southmen. Last night's game at Downing Stadium was the club's seventh home appearance of the season.

According to the North Carolina report, the Stars would play in Charlotte's city-owned Memorial Stadium, whose capacity of 24,000 can be expanded to 28,500 by the addition of temporary bleachers.

Charlotte, a city of 325,000 with a metropolitan population of more than a million, reportedly has agreed to rent the stadium to the Stars for $2,500 a game .Normally, it gets 13 per cent of the gate receipts.

The World Football Leage, in its first year of operation, has been having trouble in a number of cities as it tries to build fan interest. Downing Stadium has been criticized for inadequate lighting and a lack of easy accessibility. The Stars had been counting on moving into Yankee Stadium when that site is renovated.

Upton Bell, former general manager of the New England Patriots, was identified as the catalyst in the planned franchise switch—a transfer reportedy set "unless there are last-minute complications."

Earlier yesterday, a Chamber of Commerce spokesman in Charlotte said the city had "lost the Detroit Wheels" but that "a better W.F.L. team" would be moving to Charlotte. Bill Hensley, the Chamber's sports committee chairman, said Bell told him he was negotiating with another team.

Bell, who would become general manager of the Stars, reportedly has assured

Continued on Page 32, Column 6

Stars Slated To Shift to Charlotte

Continued From Page 31

the club's owner, Robert Schmertz, that buyers could be found once the team showed it could succeed in Charlotte.

Schmertz owns the Boston Celtics of the National Basketball Association and the New England Whalers of the World Hockey Association. The Whalers are moving to Hartford. According to a spokesman for the Stars, much of Schmertz's money is tied up at this time.

Bell has called Charlotte one of two major areas in the nation still untapped by pro football. He says the other is Phoenix, Ariz.

The former N.F.L. executive reportedly had hoped to bring the Wheels to Charlotte, but that deal fell through.

EXHIBIT F-2,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

NEW YORK TIMES, SEPTEMBER 26, 1974

Stars Confirm Transfer to Charlotte

By AL HARVIN

The migration of World Football League teams into the Deep South and reports of "floods of red ink" all over the league continued yesterday as the New York Stars officially announced their sale and shift to Charlotte, N. C., effective immediately.

Poor attendance, the inadequacies of Downing Stadium and its access routes, and more than $2-million in red ink shared the blame for the W.F.L.'s abandonment of the nation's No. 1 market in its first year. But league officials promised an expansion franchise for New York in 1976, after Yankee Stadium is refurbished.

"New York is a key city in any league, but the question of how long we could stay on Randall's Island and absorb losses was paramount in our minds when we decided to shift the franchise," said Upton Bell. He heads the group that is purchasing the Stars from Bob Schmertz. No sale price was announced.

"We had to decide whether we wanted to stay here and take a bath or move to Char-

Continued on Page 22, Column 6

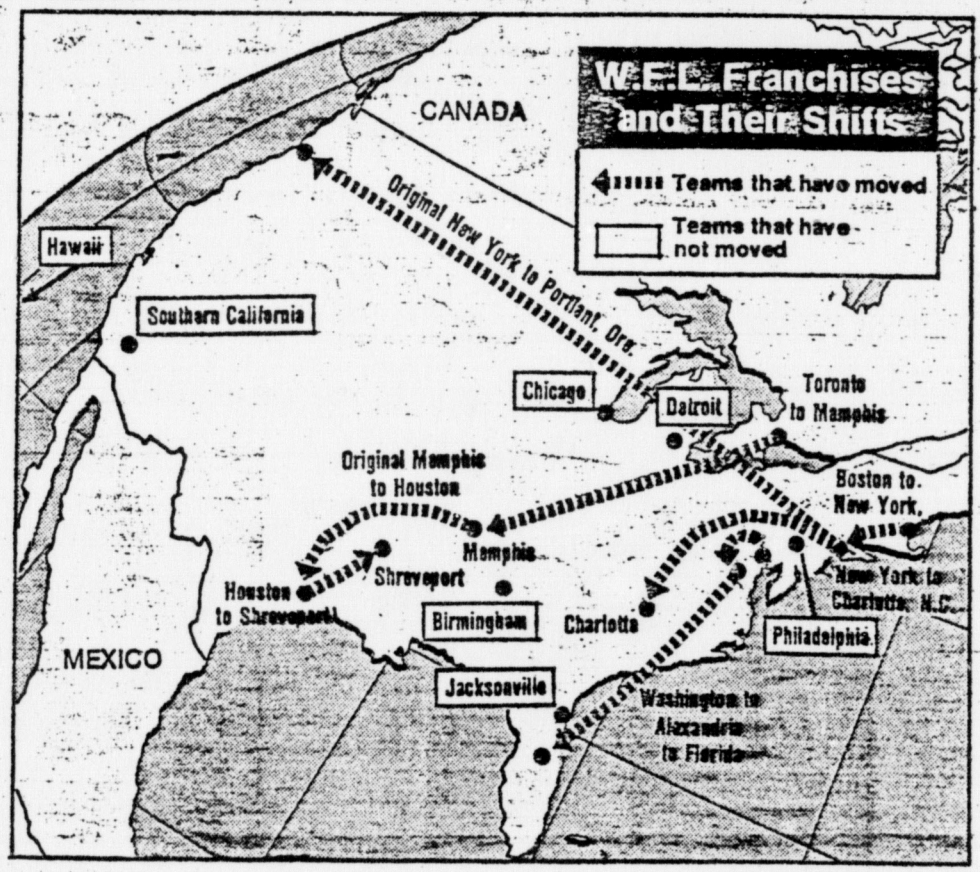


EXHIBIT F-2,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

NEW YORK TIMES, SEPTEMBER 26, 1974

Continued From Page 19

lotte, where we have a chance of making some money at the box office with a winning team," said Bell, a former general manager of the New England Patriots of the National Football League. He also is the son of the former N.F.L. commissioner, Bert Bell.

"Charlotte has a population of some 4.5 million living within a radius of 90 to 100 miles, and I think the fans will support the team," said Bell.

He will serve as acting president of the team, which will play its last three home games in the 24,000-seat American Legion Stadium starting Oct. 9 against Memphis.

According to Stars' officials, although Bell has reached terms with Schmertz, he is still putting together the group with the money to pay Schmertz, who also owns the National Basketball Association's Boston Celtics and the World Hockey Association's New England Whalers.

"There's still going to be a New York office of the Stars at 415 Madison Avenue, and we'll be refunding money to our season ticket-holders," said Howard Baldwin, the Stars' executive vice president, who also runs the Whalers for Schmertz. "Those on our season-ticket list will be given priority in buying season tickets for the new team.

"The year isn't over yet but we've lost in excess of $2-million."

That gave rise to speculation that the Stars had to be sold in the neighborhood of $3-million, since Schmertz paid $500,000 for the franchise. "We didn't expect to make money at Randalls, but we did think we might draw between 15,000 and 20,000 a game."

In seven games at the 21,587-seat Downing Stadium, which had to be refurbished by the Stars, they drew a total of 76,037, an average of 10,862. The last two games attracted only 8,050 fans, 3,830 during a monsoon-like rainstorm and 4,220 Tuesday night, the smallest two crowds of the season. They were hardly enough to pay for the newly installed lights that were still too dim for football.

The move by the Stars marks the eighth franchise shift since the 12-team W.F.L. was created. Only two of the moves have not been in a southerly direction—the major one by the original New York franchise, which moved west to Portland, Ore.

The Boston franchise moved slightly south to become the Stars, before going farther south yesterday. Other moves saw the original Memphis team move south to Houston and then move slightly north to Shreveport, La., a few days ago. The Toronto team went south to Memphis and the Washington team to Alexandria, Va., and then to Orlando, Fla.

The league's financial troubles don't appear to be over. The Detroit Wheels, who lost by 37-7 to the Stars in New York's final game at Randalls Island Tuesday night, had been rumored to be moving to Charlotte. Instead, they filed bankruptcy papers, citing debts of $2.5-million.

In addition, the league announced on Tuesday that it was taking over the Jacksonville Sharks' franchise, which had missed four paydays. Last night, the Florida (Orlando) team, which has missed one week's pay, said it had given up on the idea of moving its remaining home games to Tampa in order to generate money for the players' paychecks.

Florida, leading the second-place Stars by half a game in the Eastern Division, was averaging fewer than 11,000 fans a game, about the same as the Stars. The Blazers have an 8-4 won-lost record and the Stars are 8-5.

Bob Keating, general manager of the Stars, disputed the contention that the league might need a New York franchise right now, particularly to retain the television income that usually means solvency to a new league.

"If we were saying we're going out of New York and not coming back, yes, it might make a difference," said Keating, who also hopes to catch on with the owners of the new New York franchise. "But right now, the television money [from the Hughes network — TVS] amounts to only about $100,000 per team or maybe now about $90,000, which is a drop in the bucket compared to what we were losing."

EXHIBIT G,
PLAINTIFFS' SEPARATE APPENDIX OF EXHIBITS

COMPLAINT

SEE: PLAINTIFFS' COMPLAINT, SUPRA, pages

MEMORANDUM OPINION - MOTLEY, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

HAROLD A. LIPTON and IRVING LEVIN,

Plaintiffs,

-against-

M 18-302
Judgment #74,733

ROBERT J. SCHMERTZ,

Defendant.

- x

HAROLD A. LIPTON and IRVING H. LEVIN,

Plaintiffs,

-against-

74 CIV. 4211

ROBERT J. SCHMERTZ,

Defendant.

- x

APPEARANCES

ROBERT P. HERZOG
185 Madison Avenue
New York, New York 10016

Attorneys for Plaintiffs

REAVIS & McGRATH
By: James Nespole
One Chase Manhattan Plaza
New York, New York 10005

CONSTANCE BAKER MOTLEY, D. J.

MEMORANDUM OPINION - MOTLEY, J.

The Motion of defendant Robert J. Schmertz to Vacate Registration in this District of a judgment of the United States District Court for the Central District of California is granted. The Motion of plaintiffs Harold A. Lipton and Irving H. Levin For Writ of Attachment is denied for the following reasons:

1) An appeal from the judgment of the United States District Court for the Central District of California is presently pending in the United States Court of Appeals for the 9th Circuit. Therefore, no registration of the judgment is permitted here under 18 U. S. C. § 1963.

2) The 9th Circuit has remanded to the District Court for hearing the question whether other sufficient security in lieu of the previously required $3,000,000 supercedeas bond should not be posted by defendant.

3) Plaintiffs' remedy is in the 9th Circuit by way of Motion to Dismiss the Appeal as Frivolous. As long as an appeal of substance is pending, § 1963 bars registration of the judgment in a foreign district.

MEMORANDUM OPINION - MOTLEY, J.

4) Since no registration is possible while an appeal is pending, plaintiffs cannot secure an attachment in this Court on a theory that they have brought an action in this Court for enforcement of that judgment. Such a writ would manifestly defeat the objective of § 1963.

Dated: New York, New York
September 30, 1974

SO ORDERED

CONSTANCE BAKER MOTLEY
U. S. D. J.

ORDER OF ATTACHMENT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------x

HAROLD A. LIPTON and IRVING H. LEVIN,

Plaintiffs,

- against -

ROBERT J. SCHMERTZ,

Defendant.
----------x

CIVIL ACTION
FILE NO.

ORDER OF ATTACHMENT

Upon the summons and complaint herein, the affidavit of ROBERT P. HERZOG, duly sworn to September 25, 1974, wherein it appears that a cause of action exists in favor of plaintiffs against the defendant, for the sum stated in said affidavit, namely, $4,221,047.57, with interest from July 25, 1974, and that the plaintiffs are entitled to recover said sum about all counterclaims known to them; and further that the plaintiffs are entitled to an order of attachment against the property of the defendant pursuant to FRCP Rule 64

ORDER OF ATTACHMENT

and New York State Civil Practice Act, Rule 6201 (7), on the ground that the cause of action is based on a judgment, decree or order of a Court of the United States, which is entitled to full faith and credit, or is a judgment which qualifies for recognition under the provisions of CPLR Article 53,

NOW, on motion of ROBERT P. HERZOG, attorney for the plaintiffs, it is

ORDERED, that the United States Marshal, upon filing of the plaintiffs' undertaking as fixed herein, be and he hereby is directed to levy within his jurisdiction at any time before final judgment, upon such property in which the defendant has an interest, and upon such debts owing to the defendant as will satisfy plaintiffs' demand of $4,221,047.57, together with probable interest, costs and Marshal's fees and expenses, and that he proceed hereon in the manner required by law; and it is further

ORDER OF ATTACHMENT

ORDERED, that the plaintiffs' undertaking be and the same hereby is fixed in the sum of $, of which amount the sum of $ is conditioned that the plaintiffs will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment, if the defendant recovers judgment or it is finally decided that the plaintiffs were not entitled to an attachment of the defendant's property, and the balance thereof, in the sum of $, conditioned that the plaintiffs will pay to the United States Marshal, all his allowable fees.

_____

U.S.D.J.

AFFIDAVIT OF ROBERT P. HERZOG ANNEXED TO ORDER OF ATTACHMENT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------x

HAROLD A. LIPTON and IRVING H. LEVIN,

Plaintiffs,

- against -

ROBERT J. SCHMERTZ,

Defendant.
----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

ROBERT P. HERZOG, being duly sworn, deposes and says:

1. That he is the attorney for the plaintiffs in the above entitled cause and makes this affidavit in support of a motion for an order of attachment of the property of the defendant, ROBERT J. SCHMERTZ, pursuant to FRCP 64 and New York State Civil Practice Act, §6201.

AFFIDAVIT OF ROBERT P. HERZOG ANNEXED TO ORDER OF ATTACHMENT

2. That this is an action based on a money judgment entered on July 25, 1974 in the United States District Court for the Central District of California, and as such, is entitled to full faith and credit of this Court, and in addition, is entitled to recognition under New York State Civil Practice Law, Article 53.

3. That there are no known counterclaims to the plaintiffs.

4. That plaintiffs' cause of action, as set forth in the complaint, a copy of which is annexed hereto, is based upon the aforesaid money judgment.

5. That no other provisional remedy has been secured or sought against the defendant in this action, ROBERT J. SCHMERTZ.

AFFIDAVIT OF ROBERT P. HERZOG ANNEXED TO ORDER OF ATTACHMENT

6. As appears in the article of the New York Times dated September 25, 1974, the defendant, ROBERT J. SCHMERTZ, has received approval to move the franchise of the New York Stars, which he owns, to Charlotte, North Carolina.

7. That no prior motion has been made for an order of attachment of the property of ROBERT J. SCHMERTZ.

Sworn to before me this
25th day of September, 1974

ROBERT P. HERZOG

EXHIBIT WITH
AFFIDAVIT OF ROBERT P. HERZOG ANNEXED
TO ORDER OF ATTACHMENT

COMPLAINT

SEE: PLAINTIFFS' COMPLAINT, SUPRA, pages

EXHIBIT WITH
AFFIDAVIT OF ROBERT P. HERZOG ANNEXED
TO ORDER OF ATTACHMENT

NEW YORK TIMES ARTICLE, DATED
SEPTEMBER 25, 1974

SEE: EXHIBIT F-1, PLAINTIFFS' SEPARATE APPENDIX
OF EXHIBITS
page

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAROLD A. LIPTON and IRVING LEVIN, Plaintiffs, -against- ROBERT J. SCHMERTZ, Defendant.	M 18-302 Judgment # 74,73 NOTICE OF APPEAL TO COURT OF APPEALS

HAROLD A. LIPTON and IRVING H. LEVIN, Plaintiffs, -against- ROBERT J. SCHMERTZ, Defendant.	74 CIV. 4211 NOTICE OF APPEAL TO COURT OF APPEALS

Plaintiffs hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of the memorandum of opinion and order entered by Honorable Constance Baker Motley, United States District Judge, on September 30, 1974,

A) striking the registration of a judgment of the United States District Court for the Central District of California pursuant to 28 U.S.C. 1963,

B) denying plaintiffs' application for an order of attachment and dismissing plaintiffs' complaint, and

NOTICE OF APPEAL

C) permanently restraining and enjoining the plaintiffs from attaching or executing upon defendants property or otherwise seeking to enforce its California judgment, pending appeal thereof.

The parties to such order appealed from and the names and addresses of their respective attorneys are set forth below.

Dated: New York, New York
October 1, 1974

ROBERT P. HERZOG
Attorney for the Plaintiffs
185 Madison Avenue
New York, New York 10016
(212) 725-0001

TO: REAVIS & McGRATH, ESQS.
1 Chase Manhattan Plaza
New York, New York 10005
(212) 269-7600
Attorneys for Defendant

Copy received October 15, 1974, 11:25 A.M.
Reavis & McGrath
Attorneys for Defendant-Appellee
By Mary M. Bateman